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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/381,561	09/17/1999	JAMES RICHARD JACKSON	2426-1-001	4115
7590	02/01/2002			
DAVID A. JACKSON, ESQ. KLAUBER & JACKSON 411 HACKENSACK AVENUE HACKENSACK, NJ 07601			EXAMINER CHIN, CHRISTOPHER L	
		ART UNIT 1641	PAPER NUMBER DATE MAILED: 02/01/2002	19

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. 09/381,561	Applicant(s) Jackson
Examiner Chris Chin	Art Unit 1641



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Nov 23, 2001

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 20-39 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 20-39 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

15)  Notice of References Cited (PTO-892)      18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16)  Notice of Draftsperson's Patent Drawing Review (PTO-948)      19)  Notice of Informal Patent Application (PTO-152)

17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_      20)  Other: \_\_\_\_\_

Art Unit: 1641

## **DETAILED ACTION**

### ***Claim Rejections - 35 U.S.C. § 102***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 20-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Chow for the reasons of record.

In response to this rejection, Applicants argue that the device of Chow differs from the instant invention in that Chow provides for data collection and analysis locally at the site where the assay is performed while in the instant invention, data is recorded in the recording part and the recording part is detached from the assay part so that the data may be onwardly transmitted for subsequent processing and analysis at a remote data processing site.

Applicant's arguments have been considered but are not convincing. The device of Chow contains all of the components required in the rejected claims. Applicant's argument is essentially directed to how the device of Chow is being used versus how the instantly claimed device is being used, i.e. analysis of collected data on site as in Chow versus analysis of collected data at a site other than where the data is collected as in the instantly claimed device. Since the instant claims are not directed to methods of use, the intended use of the instantly claimed device is irrelevant because an intended use cannot be given any patentable weight. The intended use of

Art Unit: 1641

the instantly claimed device does not distinguish it from the device of Chow because an intended use does not set forth a tangible limitation. While the device of Chow is not used in the same manner as the instantly claimed device, it contains all of the components recited in the rejected claims and thus anticipates the instantly claimed device.

***Claim Rejections - 35 U.S.C. § 103***

3. Claims 20-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hillman et al in view of either Galen et al or Phillips et al for the reasons of record.

In response to this rejection, Applicants argue that Hillman et al, Galen et al, and Phillips et al all do not disclose a detachable recording part.

Applicant's arguments have been considered but are not convincing. The Examiner addressed this argument in the previous office action. Applicant's attention is directed to page 7 of the previous office action which talks about the detachable recording part in Galen et al and Phillips et al.

***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

Art Unit: 1641

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chris Chin whose telephone number is (703) 308-3991. The examiner can normally be reached on Monday-Thursday from 9:30 am to 7:00 pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le, can be reached on (703) 305-3399. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

cchin/cc  
January 31, 2002

*Christopher L. Chin*  
CHRISTOPHER L. CHIN  
PRIMARY EXAMINER  
GROUP 1800/1641